IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

OP.No. 2437 of 2000(M)

PETITIONER:
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1. **JOSDE MATHEW, SON OF MATHEW, MANICKANAMPARAMBIL, NADUVILA, VEETTIL, UDAYAMPEROOR.**

2. **GEORGE MATHEW, SON OF MATHEW, MANICKANAMPARAMBIL NADUVILA VEETTIL UDAYAMPEROOR.**

3. **BABU JOSEPH, SON OF JOSEPH, MANICKANAMPARAMBIL , UDAYAMPEROOR.**

BY ADV. SRI.M.V.JOSEPH

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, ERNAKULAM, CIVIL LINES, KAKKANAD.**

2. **THE REVENUE DIVISIONAL OFFICER, FORT COCHIN.**

3. **THE TAHSILDAR, KANAYANNUR, TALUK OFFICE, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI.V.TEKCHAND.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.2437/2000

ORDER ON CMP. NO.3987/2000 IN OP. NO.2437/2000

DISMISSED

24.09.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 15.5.95 PASSED BY THE 3RD RESPONDENT.

EXT.P2:- COPY OF THE ORDER DT. 10.6.99 OF THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 7.12.99 OF THE IST RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.2437 of 2000-M

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Dated this the 24th day of September, 2007.

JUDGMENT

1. The three petitioners jointly owned an item of property. They applied for building permit and put up a three storeyed structure. It is their allegation that each petitioner had applied his individual funds for the purpose of construction of each of the floors and that tax under the Kerala Building Tax Act, 1975 is, therefore, leviable only by treating the three floors as separate units. In support of their claim, they have the fact situation that the municipal authority has treated the entire structure as three units for the purpose of property tax and supply of electrical energy is given by the Electricity Board also on that basis. Added to that, it appears that the petitioners had produced materials before the statutory authorities

by which they attempted to show that each of them had drawn funds from a partnership firm which is their family concern and of which they were partners. The purpose of the withdrawal is shown as the construction in question. The Chartered Accountant has also certified it. It is also submitted that the income tax returns of the three petitioners also reflect such transactions. I have perused the appeal memorandum and the revision memorandum submitted before the Revenue Divisional Officer and the District Collector. The petitioners have also clearly averred in the writ petition regarding the grounds raised before the statutory authorities.

2. I may notice that Ext.P2 appellate order was issued after this Court had set aside the earlier appellate order. But it is a sad state of affairs that in Ext.P2 appellate order, the appellate authority does not refer to any of the materials but has merely stated in the last paragraph of Ext.P2 that no further convincing material is produced.

3. Incidentally, it needs to be noticed that the plea of the petitioners has not been appropriately understood by the statutory authorities. I say so because, it is not the plea of the petitioners that they owned individual apartments to avail the benefit of Explanation 2 to Section 2(e) of the Building Tax Act. Their plea is that each of them is the owner of the individual floor which they claim as exclusively belonging to them on the basis of the written agreement between them regarding construction coupled with the application of the individual funds for completing the construction. The petitioners are justified in relying on the decision of this Court in **Bhattathiripad v. Tahsildar** [1994 (1) KLT 790] to show that such a contention would lie even in relation to commercial premises and the finding to the contrary by the appellate authority is without any legal foundation.

4. For the aforesaid reasons, the appellate and revisional

orders Exts.P2 and P3 have to go. They are accordingly set aside.

5. In the result, this writ petition is allowed quashing Exts.P2 and P3 and directing that the appeal filed by the petitioners will be taken up, considered and disposed of by the RDO in accordance with law and after adverting to and considering the entire materials on record and in the light of what is stated above. The petitioners will be afforded an opportunity of hearing either through them or through their chartered accountant or through their counsel, as they may choose. The proceedings as aforesaid shall be concluded within an outer limit of four months from the date of receipt of a copy of this judgment. The amounts paid by the petitioners in obedience to the interim orders in this case shall be given due credit to.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.2437 of 2000-M

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JUDGMENT

Dated: 24th September, 2007.